

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

JONATHAN HOUSE §
v. § CIVIL ACTION NO. 9:11v144
UNITED STATES OF AMERICA §

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE

The Movant Jonathan House filed this motion to vacate or correct his sentence under 28 U.S.C. §2255. This Court ordered that the matter be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

The Government was ordered to answer House's petition and did so, arguing that the petition was successive. On January 26, 2012, the Magistrate Judge issued a Report recommending that the request for dismissal be denied, noting that House's original sentence had been vacated and replaced by a new sentence of 10 years in prison, and his present motion to vacate challenged the new sentence and thus was not successive to a prior motion which challenged the original sentence. Magwood v. Patterson, 130 S.Ct. 2788 (2010).

No objections were filed to the Report of the Magistrate Judge; accordingly, the parties are barred from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to proposed factual findings and legal conclusions accepted and adopted by the district court. Douglass v. United Services Automobile Association, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has reviewed the pleadings in the case as well as the Report of the Magistrate Judge. Upon such review, the Court has determined that the Report of the Magistrate Judge is correct. It is accordingly

ORDERED that the Report of the Magistrate Judge (docket no. 12) is hereby ADOPTED as the opinion of the District Court. It is further

ORDERED that the Government's request to deny the present petition as successive, contained within the Government's answer of November 23, 2011, is hereby DENIED. It is further

ORDERED that the Government shall have 60 days from the date of entry of this order in which to answer House's claims on the merits. Finally, it is

ORDERED that House's request for a 60-day extension of time (docket no. 13) is DENIED as unnecessary at this time, in that he has no deadlines for which an extension is required and the Government has 60 days in which to answer his claims.

So ORDERED and SIGNED this 7 day of March, 2012.



Ron Clark, United States District Judge